



THE
PEW
CHARITABLE TRUSTS

Submission to Commission's Consultation on Fishing Opportunities for 2015

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The Pew Charitable Trusts
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The Pew Charitable Trusts welcomes the Commission's Communication initiating a consultation on fishing opportunities for 2015.¹ In the Communication, the Commission sets out the principles for total allowable catches (TACs) for 2015 and proposes a number of steps for adjusting the setting of fishing opportunities in line with the reformed Common Fisheries Policy (CFP).² Setting correct fishing opportunities is fundamental to achieving the objectives of the CFP, namely to end overfishing and to restore and maintain fish stocks above levels capable of producing the maximum sustainable yield (MSY). In this submission, we have mainly concentrated on the waters of North-Western Europe, where Pew's effort to end European Union overfishing is focused.

A significant number of EU stocks in the Atlantic Ocean and adjacent waters are outside safe biological limits, and for many other stocks the status is unknown. The number of stocks being overfished and the rate of overfishing have increased even while the CFP's MSY objectives were being negotiated and agreed to. This is inexcusable, and further steps must be taken to ensure long-term sustainability of EU fisheries. With respect to fishing opportunities, we would like to highlight the following key points:

- As re-confirmed in the Commission's Communication, fishing opportunities must be set according to Article 2.2 of the CFP, with the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing MSY.
- The Commission's Communication lacks information about the state of fish populations in relation to biomass levels capable of producing MSY. Such information is a precondition to evaluating progress towards the CFP objective to restore and maintain populations of fish stocks above levels producing the MSY.
- Pew welcomes the Commission's intention to propose TACs in line with MSY advice and only to accept delays beyond 2015, but not later than 2020, to ensure that the social and economic sustainability of the fishing fleets involved is not seriously jeopardized. However, it is essential that the Commission clarifies who must provide what evidence in such requests, by when, and by whom it is validated.
- Any request to delay the 2015 MSY deadline should include clear indication of how fishing mortality will be progressively and incrementally reduced in line with Article 2.2 to achieve the MSY objective as soon as possible but not later than 2020 – and this must be made public.
- In order to apply the precautionary approach in a systematic, predefined, and transparent manner for stocks where full scientific advice is not available, the Commission must provide further information on how it defines such an application.

¹ European Commission, "Communication From the Commission to the European Parliament and the Council Concerning a Consultation on Fishing Opportunities for 2015 Under the Common Fisheries Policy" 388 final (2014), http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/fishing-opportunities-2015/doc/com-2014-388_en.pdf.

² Regulation (EU) 1380/2013 of the European Parliament and of the Council, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:354:0022:0061:EN:PDF>.

When applying the precautionary approach, it is important to reduce fishing mortality and not only fishing opportunities.

- Pew agrees that International Council for the Exploration of the Sea (ICES) advice on catch limits must be a precondition for any uplift in quota to reflect the introduction of landing obligations. Uplifts should be limited in scope to ensure that the total takeout will not prejudice the MSY objective of the CFP.

State of resources

State of stocks: Pew welcomes the Commission's effort to illustrate the current state of EU fisheries resources. In the North-East Atlantic and adjacent waters, the number of stocks outside safe biological limits fell significantly in the last decade, from 30 stocks in 2003 to 14 in 2012. However, since then the number of stocks outside safe biological limits has increased to 17. In the last year, the number of stocks inside safe biological limits has dropped from 24 to 21. Yet, safe biological limits are only a fraction of the biomass objective of article 2.2, which is to progressively restore and maintain populations of fish stocks above biomass levels capable of producing MSY. In 2014, the number of stocks where the state is unknown due to poor data has increased from 41 to 47 stocks. For most deep-sea stocks, projections for MSY are not available due to a lack of data.

This state of affairs is deplorable, and further steps must be taken to ensure more long-term and effective fisheries management. Furthermore, the Commission's Communication does not provide any information on where stocks are in relation to biomass levels that produce MSY. Such information is essential:

- *To evaluating progress towards the CFP core objective to restore and maintain populations of fish stocks above biomass levels capable of producing the MSY (Article 2.2);*
- *To informing the Commission when to propose measures to enable further rebuilding once MSY levels are reached, as indicated in the Communication.*

Rate of fishing: The annual setting of TACs as an expression of fishing mortality is closely related to the CFP objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing MSY. Setting fishing limits below MSY (F_{MSY}) rates will allow fish stocks to eventually recover to biomass levels above those capable of producing MSY (B_{MSY}). We acknowledge that between 2007 and 2013, the percentage of stocks that were overfished in the North-East Atlantic and adjacent waters was reduced. However, we note that this positive trend has been reversed: Where information is available, the number of stocks classified as being overfished has increased from 16 to 19 and the number of stocks where scientific advice is to stop fishing went up from eight stocks in 2012 to 12 in 2014. Furthermore, it seems that not only the number of overfished stocks, but also the extent of overfishing, has increased: The difference between scientific advice on fishing opportunities and agreed TACs has tripled in the past two years, from 11 to 35 percent. In other words, rather than ending overfishing, decision-makers have actually increased the rate.

In Pew's view, decision-makers setting fishing limits above the available scientific advice is not in line with the CFP. In fact, while agreeing on a phase-out of overfishing, ministers have actually increased the amount and degree of overfishing in recent years. By increasing the difference between scientific advice and agreed fishing limits, decision-makers are threatening the objective of restoring fish stocks to sustainable levels and delaying higher and sustainable yields in the long term. Research in 2012 suggested that restoring 43 fish stocks would generate an additional 3.5 million tonnes of fish landed annually, translating into a potential €3 billion in additional annual revenue.³ Each year that overfishing persists, fishing operations and fishing communities are prevented from realising such potential in the long term. Setting fishing limits must be done in accordance with scientific advice as spelled out in CFP Article 3(c).

Management by multiannual plans

The CFP requires the adoption of multiannual plans that shall provide robust and lasting frameworks for fisheries management. The Commission intends to propose these multiannual plans as soon as possible based on the report from the Inter-Institutional Taskforce. The Commission will also analyse the need to adapt existing proposals for multiannual plans and to table new proposals in line with the CFP.

Pew welcomes the progress being made to overcome the inter-institutional deadlock on developing multiannual plans and agrees that their development should be a priority. However, we are concerned about the continuous reference to MSY as ranges of values in the final report of the Inter-Institutional Taskforce.⁴

- *ICES, taking into account uncertainties in stocks dynamics and data, has consistently advised on a single F_{MSY} value that is anticipated to achieve success with a 50 percent probability.⁵ If ranges are provided, ICES advice should be the lower limit of probability to achieve the MSY objective. Choosing a higher risk of not achieving the objective of the reformed CFP is not aiding the recovery of fish stocks.*
- *We are concerned about the implementation of ranges of F_{MSY} between species in mixed fisheries and reiterate that F_{MSY} is the upper limit of the management objective for avoiding overfishing.*
- *We stress that the CFP requests the establishment of measures "in accordance with" the best available scientific advice (Article 3). For Pew this means not exceeding scientific advice on TACs. In the past, proposals based on scientific advice have far too often resulted in agreed fishing limits that were significantly higher than those recommended by scientific bodies.*

³ New Economics Foundation, "Jobs Lost at Sea: Overfishing and the Jobs That Never Were" (2012), <http://www.neweconomics.org/publications/entry/jobs-lost-at-sea>.

⁴ Task Force on Multiannual Plans, "Final Report" (April 2014), http://www.europarl.europa.eu/meetdocs/2009_2014/documents/pech/dv/taskfor/taskforce.pdf.

⁵ International Council for the Exploration of the Sea, "Advice Basis: 1.2" (June 2013), page 17, http://www.ices.dk/sites/pub/Publication%20Reports/Advice/2013/2013/1.2_General_context_of_ICES_advice_2013_June.pdf.

Stocks with information on MSY exploitation rates

The reformed CFP requires MSY exploitation rates by 2015 where possible, and on a progressive, incremental basis by 2020, for all stocks with the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing the MSY.

Time-bound objectives to end overfishing are a cornerstone of the reformed CFP. Pew welcomes the Commission's intention to propose TACs consistent with MSY in 2015 for stocks with full assessments and MSY estimates. We also welcome the reiteration that delays in achieving MSY by 2015 (but not later than 2020) are acceptable only if it would otherwise seriously jeopardise the social and economic sustainability of the fishing fleets involved. However, the Commission must clarify how the relevant provisions of the CFP will be applied. In particular:

- *Who must provide what scientific evidence, by when, and validated by whom to prove that achieving MSY in 2015 would seriously jeopardise the social and economic sustainability of the fishing fleets involved.*
- *Any request for delaying the 2015 MSY deadline should include a clear indication of how fishing mortality is expected to be progressively and incrementally reduced in line with Article 2.2 to achieve the MSY objective as soon as possible.*
- *Any requests for delays should be made public and allow stakeholders to contribute to the process of the annual setting of fishing limits.*

Other stocks

Stocks with data available to determine MSY proxies: The Commission intends to propose TACs in a similar way when a full MSY assessment exists, and it envisages further evaluation of the need and possibilities to increase the knowledge status on these stocks for assessment in the near future.

Pew agrees that proxies that provide reliable indications of how to reach MSY are a helpful tool for setting TACs when a full MSY assessment is unavailable. Pew welcomes the Commission's intention to further evaluate the need to increase knowledge status of these stocks to assessments in the near future.

Stocks with survey-assessed trends or with reliable time-series catch data to develop MSY proxies: For stocks with only quantitative ICES advice, the Commission intends to use the updated ICES advice on these stocks as a basis for its proposals and will consider the situation on a case-by-case basis, taking into account the precautionary approach.

Pew welcomes the Commission's clear intention to take the precautionary approach into account for these stocks. Article 6 of the United Nations Fish Stocks Agreement does not only refer to cases where scientific advice is not available, but also to situations in which information

is uncertain, unreliable, or inadequate.⁶ Moreover, Article 6 requires that fish stocks be maintained above levels that can produce MSY, taking into account not only scientific uncertainty but also the need to minimize impacts on non-target species and protect the marine environment. The Commission should therefore specify that fishing limits in situations of scientific uncertainty and potential harm to by-catch species and/or the marine environment will be set at more precautionary levels.

Stocks with a presumption of stability: Commission and Council agreed in December 2013 on the desirability of maintaining TACs unchanged for 25 stocks unless scientific advice indicates a need for change. There is no sign that the Commission is reconsidering this approach.

Pew has concerns about the extent to which the approach agreed to by Commission and Council is in line with the precautionary approach as contained in the CFP. Fishing opportunities should be based on existing scientific advice. In case of limited information, the burden of proof is with decision-makers to demonstrate that TACs are precautionary. Less scientific information should result in lower TACs and particularly in lower mortality.

Stocks without data: Where no scientific advice is available, the precautionary approach in line with Article 2(2) of the CFP should be followed in a systematic, predefined, and transparent way.

Pew welcomes the intention to follow the precautionary approach in a systematic, predefined, and transparent way for stocks where no scientific advice is available. However, we are surprised that the Commission is not providing information on what this systematic, predefined, and transparent way is. At what stage will it be “predefined”? Earlier Communications – for example, the Consultation on Fishing Opportunities for 2011⁷ – included in its Annex III and IV an overview on how the Commission intended to propose TACs, which could serve as an example for communicating how the Commission intends to apply the precautionary approach. When applying the precautionary approach, it is essential to actually reduce fishing mortality and not only fishing opportunities.

Deep-sea stocks: In 2014 the Council will set fishing opportunities for deep-sea stocks for 2015-16. Deep-sea stocks must be managed sustainably in view of the sensitive nature of these stocks and deep-sea marine life.

Pew welcomes that the Commission will have due regard for commitments undertaken in United Nations Resolutions 61/105 of 2006, 64/72 of 2009, 66/68 of 2011, and the 2008 International Guidelines for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organization of the United Nations when proposing fishing opportunities for deep-

⁶ United Nations, “Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,” Article 6.2 (1995), http://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm.

⁷ European Commission, “Communication From the Commission to the European Parliament and the Council Concerning a Consultation on Fishing Opportunities for 2015 Under the Common Fisheries Policy” (2014), 388 final, http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/fishing-opportunities-2015/doc/com-2014-388_en.pdf.

sea stocks. We also welcome the Commission's confirmation that it will strictly apply the precautionary approach. We would note that the EU has committed to managing deep-sea fisheries as follows:

"Adopt conservation and management measures ... on the basis of stock assessments and the best available scientific information, to ensure the long-term sustainability of deep sea fish stocks and non-target species, and the rebuilding of depleted stocks ... and, where scientific information is uncertain, unreliable, or inadequate, ensure that conservation and management measures are established consistent with the precautionary approach, including measures to ensure that fishing effort, fishing capacity, and catch limits, as appropriate, are at levels commensurate with the long-term sustainability of such stocks" and "not to authorize bottom fishing activities until such measures have been adopted and implemented" (paragraphs 119[d] and 120 of United Nations General Assembly Resolution 64/72).

Where the best scientific information available does not identify exploitation rates corresponding to the precautionary approach to fisheries management due to a lack of sufficient data concerning a certain stock or species, no fishing opportunities should be allocated for the fisheries concerned. We would like to point out that, as the Commission has noted, many fisheries targeting deep-sea species are mixed-species fisheries with relatively large by-catches of non-target species and that setting TACs for target species should take account of the impact on by-catch species. As such, in setting the fishing opportunities for target deep-sea species, the Commission should ensure that such fishing opportunities will not undermine the long-term sustainability of non-target species and the rebuilding of non-target as well as target deep-sea fish stocks, and that by-catch is minimised to the maximum extent possible, including the prevention of by-catch of the most vulnerable species, such as deep-sea sharks.

Landing obligation

In 2015 the landing obligation will come into force for several pelagic species and several species in the Baltic Sea. The Commission asked ICES to include the available data on discarding in these fisheries into the relevant stock assessments and catch forecasts, with a view of potentially adjusting the fishing opportunities for the stocks covered by the landing obligations in 2015.

The landing obligation is intended to reduce, and gradually eliminate, unwanted fishing mortality and thus contribute to achieving the MSY objectives in line with Article 2.2. Pew therefore welcomes the clear statement that any adjustments to the quota must be compatible with the attainment of MSY. In that respect it is crucial that adjustments are in accordance with scientific advice and do not unintentionally increase overall fishing mortality:

- *ICES advice on catch limits, as requested by the Commission, must be a precondition for any potential uplift of TACs for stocks under the landing obligation. In cases where ICES does not provide catch advice – e.g., in cases where the discard amounts are not known or cannot be reliably estimated, in accordance with the precautionary approach to fisheries management – no adjustments to fishing limits should be made.*

- *Quota uplifts should be limited in scope to ensure that the total out-take will not prejudice the CFP's MSY objective by keeping incentives to fish more selectively and to enhance monitoring of the landing obligation. This is particularly important in light of the new flexibilities the landing obligation also introduces. It would be reasonable to limit quota uplifts to:*
 - *Maximum of 75 percent of the estimated discard for fleet segments operating under full catch documentation.*
 - *Within the global limit of 30 percent of the previous TAC.*

Previous Council agreements on fishing limits for vessels participating in trials of fully documented fisheries (e.g., for Danish Catch Quota Trials) made similar provisions. Council Regulation (EU) No 43/2012 states, "[T]he amount of the additional allocation granted to an individual vessel that participates in trials on fully documented fisheries shall be no more than 75% of the discards estimated for the type of vessel to which it belongs, and in any case shall not represent more than a 30% increase of the vessel's basic allocation."⁸ Linking quota uplift to full catch documentation is also in line with the Pelagic Advisory Council's opinion on the implementation of the landing obligation where it asks for "[v]erifiability as precondition" for measures under the discard plan and for a shift in the burden of proof.⁹

⁸ "Council Regulation (EU) No. 43/2012 of 17 January 2012: Fixing for 2012 the Fishing Opportunities Available to EU Vessels for Certain Fish Stocks and Groups of Fish Stocks Which Are Not Subject to International Negotiations or Agreements," Article 7.2, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:025:0001:0054:EN:PDF>.

⁹ Pelagic Regional Advisory Council, *Recommendations on Implementing the EU Landing Obligation in Pelagic Fisheries*, 38 (April 2014), <http://www.pelagic-rac.org/media/pdf/20140429%20PRAC%20land%20obl%20recom.pdf>.